In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 120

LLOYD EDWARDS, AS EXECUTOR OF THE WILL OF SEREN P. HANSEN, DECEASED, PETITIONER

v.

V. LEE PHILLIPS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The issue in this case is whether the charitable deductions allowed bequests by Section 2055(a) and the income of estates by Section 642(c) of the Internal Revenue Code of 1954 apply to the bequest of Seren P. Hansen of his entire estate to the Hammer School District in the town of Vrads, Denmark, "[t]o be used by said school district in any manner it may wish for the betterment of the schools or aid to the students of said district." Petitioner, the executor of the estate, reported a net taxable estate of $104,865.81, with income during 1962 of $1,167.70. He paid the federal estate and income taxes due on these amounts. Respondent, the District Director, denied a timely claim

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for refund. The district court, in the resulting suit, agreed with respondent, and the court of appeals affirmed.

1. A taxpayer seeking a deduction must show that he clearly comes within the terms of a statutory provision allowing one. See, *e.g., Commissioner* v. *Sternberger's Estate,* 348 U.S. 187, 190 n. 3; *New Colonial Co.* v. *Helvering,* 292 U.S. 435, 440. The only estate tax deduction provision that could apply to the bequest to the Hammer School District is Section 2055(a). It allows deductions for bequests:

> (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;
>
> (2) to or for the use of any corporation organized and operated exclusively * * * for educational purposes * * *;
>
> (3) to a trustee or trustees * * * but only if such contributions or gifts are to be used * * * for * * * educational purposes * * *

Subsection (1) is the only provision that deals with bequests to political subdivisions, and in terms it limits deductions to bequests to *domestic* governmental units. The necessary implication of the statutory scheme is that bequests to foreign political subdivisions are not deductible, even though they are for the "public purpose" of education. For Congress plainly intended to treat governmental organizations as separate and distinct entities from the corporations and trusts dealt with in Subsections (2) and (3), and the only gifts to foreign entities that qualify for deduc-

tion are those made to corporations or trusts covered in those subsections. Accordingly, those subsections must be read as encompassing only corporations and trusts which cannot be deemed governmental subdivisions; the only bequests to governmental subdivisions that may be deducted are those to domestic political units.

The parties stipulated, and the courts below held, that the Hammer School District is a political subdivision of the state of Denmark. Its officials are elected or appointed. Their function of administering a public school system is governmental in nature. In all respects the Danish school district is comparable to a United States school district, which would be among the entities described in Section 2055(a)(1). Since that section specifically allows deductions only for bequests to domestic political subdivisions, the courts below correctly denied the deduction to Mr. Hansen's bequest, whether or not the Hammer School District might have some of the characteristics of a corporation or its officials some of the functions of trustees.[1]

In so holding, they properly implemented the statutory scheme,[2] which demonstrates that Congress in-

[1] Cases such as *In re Hammargren's Estate*, 289 N.Y. Supp. 681, on which petitioner relies (Pet. 6), and which interpret provisions of State inheritance tax statutes, are not useful in determining the purpose Congress had in mind when it framed Section 2055(a). The principal holding of *Hammargren* was that a teacher's retirement fund was a subdivision of the government of New York, so that the issue in the instant case was not presented even under the New York statute.

[2] Sections 2522 (a) and (b) of the 1954 Code are also of interest in demonstrating the care with which Congress has defined the circumstances in which gifts to foreign organizations

tended that any testamentary gift to foreign institutions be channeled through private corporations or trusts.[3]

We are aware of only one decision—*Schoellkopf* v. *United States*, 124 F. 2d 982 (C.A. 2)[4]—that in any manner bears on the issue presented here under Section 2055(a). One issue in *Schoellkopf* was whether the settlor of an *inter vivos* trust lost a charitable deduction under the income tax provisions of Section 23(n) of the Revenue Act of 1928, 45 Stat. 791, because of his contingent direction that the trustees pay money to two German cities "for charitable, educational and/or benevolent purposes." Judge Learned Hand de-

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are deductible or otherwise free of tax. Section 2522(a)(2) allows, for gift tax purposes, deductions for gifts from United States citizens or residents to "a corporation, or trust" having specified charitable purposes. Non-resident aliens, on the other hand, may deduct only gifts to a "domestic" corporation, Section 2522(b)(2) or to a "domestic" trust which will use the gift "within the United States", Section 2522(b)(3).

[3] Although Congress has in some circumstances allowed and in some denied charitable deductions for donations to foreign private organization, see, *e.g.*, footnote 2, *supra*, every Code section that allows a deduction for gifts to political subdivisions is expressly limited to gifts to domestic subdivisions, and this has been the case since at least 1918. See Sections 219(b) and 403 of the Revenue Act of 1918, 40 Stat. 1057 (estate tax); Section 214(a)(11) of the Revenue Act of 1921, 42 State 227 (income tax); and Section 505(A)(2)(a) of the Revenue Act of 1932, 47 Stat. 169 (gift tax). The legislative history fails to disclose the purpose of the dichotomy thus drawn between public and private foreign agencies. But the reason may lie in the belief that private beneficiaries, whether foreign or domestic, may be more amenable to the jurisdiction, and therefore the supervision, of domestic courts, than foreign political subdivisions.

[4] *Schoellkopf* was not cited below by either party.

clined to allow the deduction under Section 23(n)(1), which allowed deductions for gifts to *domestic* political subdivisions for "exclusively public purposes". But, he did rule for the settlor under Section 23(n)(2), which allowed deductions for gifts to trusts and corporations for "charitable * * * or educational purposes".

The precise basis of the decision is unclear. It would seem, in view of the facts of the case and the language of the statute, that the dispositive fact was that the gift was made to a trust, which was a recipient expressly named by Section 23(n)(2). The will at issue in the present case did not make use of a trust. Thus, the decision below under Section 2055(a) is in accord with the reading that *Schoellkopf* gives the similar language of Section 23(n) of the 1928 Act.[5]

2. In the district court petitioner's counsel agreed that the deductibility of the estate's 1962 income under Section 642(c) should be governed by the decision respecting the deductibility of the bequest under Section 2055(a). Even if that concession does not bar petitioner from raising the issue, no deduction would be appropriate under Section 642(c), which allows trusts and estates in computing taxable income to deduct any amount which is—

> paid or permanently set aside for a purpose specified in Section 170(c), or is to be used

[5] Unlike the requirements of Section 170(c) (2) and (3) of the 1954 Code, Section 23(n)(2) of the 1928 Act did not require that the gift be to a domestic corporation or trust. Thus, the income tax provisions of the 1928 Act were much like the estate tax provisions now found in Section 2055(a) of the 1954 Code.

> exclusively for religious, charitable, scientific, literary or educational purposes * * *.

A gift to the Hammer School District would not be "for a purpose specified in Section 170(c)," which grants a deduction only for gifts to domestic political subdivisions or to domestic corporations and trusts. Therefore the income of Mr. Hansen's estate may be deducted only if it is deemed to have been "set aside * * * to be used exclusively for * * * educational purposes" within the meaning Congress intended the language of Section 642(c) to have.

These words cannot be read by themselves; they must be placed in the context of the entire system for taxing trusts and estates established by the Internal Revenue Code. So viewed, the essential purpose of this portion of section 642(c) is to allow deductions for sums a trust or estate expends directly for educational purposes, as in operating a school or granting scholarships—Section 170(c) applies only to funds applied to such purposes indirectly through another entity. In no event should the language of section 642(c) be construed as petitioner argues—to allow deductions for gifts to a foreign governmental subdivision, contrary to the clear import of Sections 170(c)(1) and 2055(a)(1).[8]

[8] *Estate of Tait* v. *Commissioner*, 11 T.C. 731, acquiescence, 1950-1 Cum. Bull. 5, on which petitioner also relies (Pet. 7), is not to the contrary. Its holding that the deduction of Section 642(c) (then Section 162(a) of the 1939 Code) applies to estate income given to foreign private charities is entirely consistent with subsections (2) and (3) of Section 2055(a), which, unlike the comparable income tax provisions of Section 170(c), do not limit deductions for estate tax purposes to gifts to domestic corporations and trusts.

3. Certiorari in any event is not warranted because of the limited importance of the issues presented. As petitioner points out (Pet. 5), there has been virtually no litigation on point in a half century. We are aware of no case other than *Schoellkopf*, the present one, and one now pending in the Court of Claims (Pet. 5) in which the question of the deductibility under Section 2055(a) of a bequest to a foreign political subdivision even arguably has been raised.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
MITCHELL ROGOVIN,
Assistant Attorney General.
DAVID O. WALTER,
JEANINE JACOBS,
Attorneys.

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